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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street NW
Washington, DC 20536

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

SEP 30 2003

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy N. Honey for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director of the California Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a mosque. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4) in order to employ him as "Youth Coordinator and Assistant Imam."

The director determined that the petitioner failed to establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition.

On appeal, counsel asserts that there is no requirement in the statute or the regulations that the beneficiary's qualifying employment must have been full-time salaried employment.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The issue to be reviewed in this proceeding is whether the petitioner has shown that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two-year period immediately preceding the filing date of the petition.

Pursuant to 8 C.F.R. § 204.5(m)(1):

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing in the capacity of a youth coordinator and assistant imam since at least April 30, 1999.

The petitioning organization's imam, Tajuddin B. Shuaib, stated in a letter that accompanied the I-360 petition:

Since 1985, he assisted me in Los Angeles. During the entire period of his volunteer work for the local Muslim Community, he gave evidence of grace, gifts, usefulness and thorough understanding of the teachings of the doctrines and beliefs of Islam. During this period he received the needed training for the present religious position.

The petitioner described the beneficiary's volunteer work for the mosque as follows:

Mr. [REDACTED] has spent more than thirty (30) hours weekly of his time working as follows; 60% as coordinator in teaching and guiding the youth and children to walk in the path of the Islamic teachings and doctrines of the Qur'an. 30% as family coordinator helping, both parents and children, in facing and solving current cultural problems, and 10% in

assisting me personally in resolving religious issues pertaining to the Foundation and the Muslim Community.

The petitioner acknowledges that the beneficiary performed services for the community on a voluntary basis from an unspecified date in 1985 to the filing date of the petition. On appeal, counsel asserts that there is no requirement in the statute or the regulations that the beneficiary's requisite two years of qualifying employment must be full-time salaried employment.

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 612 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he or she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To find otherwise would be outside the intent of Congress.

In this case, the beneficiary has performed the duties of the offered position on a voluntary basis since 1985. Therefore, it cannot be concluded the petitioner has shown that the beneficiary was continuously engaged in the proffered position on a full-time salaried basis for the two-year period preceding the filing of the petition.

With respect to counsel's objection to denial of this petition in view of the approval of similar petitions in the past, CIS is not required to approve petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the previously approved petitions and their supporting documentation. It is, therefore, not possible to determine definitively whether they were approved in error or whether the facts and conditions have changed since their approval.

Beyond the director's decision, the petitioner has not established that the beneficiary is qualified for a religious worker position within the religious organization, or that the position qualified as that of a religious worker. Additionally, the petitioner has failed to establish that it qualifies as a bona fide nonprofit religious organization. The address on the recognition letter from the Internal Revenue Service (IRS) does not correspond to the address listed on the Form I-360. Although the petitioner states that the beneficiary will perform services as a religious worker at the King Fahd Mosque in Culver City, California, the petitioner has not provided any evidence to establish that the King Fahd Mosque has been recognized by the IRS as a bona fide tax exempt religious organization.



The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.